U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0434

ARTHUR LEWIS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
FLUOR DANIEL CORPORATION	)	
	)	
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA	)	DATE ISSUED: July 21, 2016
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Modification of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Arthur Lewis, Spring, Texas, *pro se*.

Monica Fekete Markovich and Jonathan A. Tweedy (Brown Sims), New Orleans, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant, appearing without representation, appeals the Decision and Order on Modification (2014-LDA-00465) of Administrative Law Judge Larry W. Price rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers'

Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq*. (the Act). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are in accordance with law. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

On June 26, 2011, claimant was working as a material control specialist for employer at a forward operating base in Afghanistan. He unloaded material from a helicopter, and his neck and shoulder began to hurt later that night. Claimant treated with the Army medic, who gave him pain medicine and a heating pad, which claimant used to treat his pain until he went on vacation to the Philippines on July 2, 2011. Tr. 1 at 29-30, 33.[1] By the time he departed on July 2, 2011, the pain extended to his arms, hands, legs, and feet. Claimant received some treatment in the Philippines and, two days after returning to Afghanistan, on July 31, 2011, he resigned from his job, completed demobilization paperwork, and returned to the United States.[2] *Id*. at 33-34; 1 CXs 8, 11.

On November 8, 2011, claimant sought treatment for his now-symptomatic upper back pain. Tr. 1 at 68. He was diagnosed with multiple levels of cervical spine stenosis. 1 CX 1 at 9, 13-17. On November 23, 2011, Dr. Tomaszek, a neurosurgeon, performed a C3 through C7 laminectomy. *Id*. at 22. Claimant later developed lower back pain, and an MRI of claimant's lumbar spine on January 17, 2012, revealed spinal canal stenosis and borderline neural foraminal stenosis at L3/L4. *Id*. at 37-38.

In a May 2013 Decision and Order, the administrative law judge found that claimant suffered a work-related cervical spine injury, as well as a work-related aggravation of his pre-existing cervical spine and polyneuropathy conditions, making them symptomatic. Decision and Order at 16-17, 19. The administrative law judge found that claimant's lumbar spine injury is not work-related *Id*. at 16, 18. Finding that claimant's credible testimony established he was restricted to sedentary or light-duty positions and able to lift only up to 10 pounds frequently, the administrative law judge

[1] There were two hearings in this case. The transcript from the first hearing in 2013 is abbreviated as Tr. 1, and the transcript from the second hearing in 2014 is abbreviated as Tr. 2. Similarly, the exhibits from the first hearing are identified as 1 CX__ and 1 EX __, and the exhibits from the second hearing are identified as 2 CX__ and 2 EX ___.

[2] Although claimant had been found fit for duty on September 1, 2010, testing revealed a pre-existing cervical spine condition as well as a pre-existing sensori-motor polyneuropathy condition. 1 CX 1 at 1; 1 EXs 2 at 1-2; 6 at 2.

found claimant could not perform his usual work in Afghanistan, but that three positions in employer's March 2013 labor market survey, those of security officer, flex security officer, and assistant store manager, were suitable. As there was no evidence of a diligent job search, the administrative law judge awarded claimant temporary total disability benefits from August 1, 2011 to March 7, 2013, and temporary partial disability benefits thereafter.[3] He also ordered employer to pay all reasonable and necessary medical expenses arising out of claimant's work-related cervical spine injury and aggravated neuropathy.

Following the May 2013 decision, claimant began treating with Dr. Mai, a primary care physician who specializes in internal medicine. Dr. Mai opined that claimant had permanent restrictions as of February 3, 2014, and was unable to return to any work. 2 CX 2 at 29, 46. Based on Dr. Mai's opinion, claimant, who was represented by counsel, moved for modification of his prior award, seeking permanent total disability benefits instead of temporary partial disability benefits. Claimant also claimed: 1) reimbursement for certain medical care; 2) reimbursement for medical mileage; 3) entitlement at employer's expense for the services of a yard man and a maid, and for transportation services; and, 4) pain management treatment with Dr. Ramineni, massage therapy, and a prescription for nerve-pain medicine (gabapentin). Employer conceded claimant's injury had reached permanency and subsequently filed for relief under Section 8(f), 33 U.S.C. §908(f).

The administrative law judge found, to the extent claimant sought modification based on a mistake of fact, that claimant did not establish a mistake in the findings that his lumbar condition is not work-related and that employer established the availability of suitable alternate employment. With respect to a change in claimant's condition, the administrative law judge accepted the parties' stipulation that claimant's condition became permanent as of February 3, 2014; therefore, claimant's condition changed from temporary to permanent. As all doctors opined that claimant is incapable of returning to his pre-injury employment, the administrative law judge found claimant established a prima facie case of total disability. Decision and Order on Modification at 5; 2 CX 2 at 29, 46; 2 EX 3. The administrative law judge credited Dr. Vanderweide's opinion over Dr. Mai's and found that claimant is able to work within restrictions. Accordingly, the administrative law judge found claimant did not establish a change in work restrictions and that the jobs previously found to be suitable remained so. Decision and Order on Modification at 5-6. Further, the administrative law judge rejected claimant's job-search evidence, indicating that he applied in June 2014 for the jobs in the March 2013 labor

[3] This award entitled claimant to benefits at the applicable maximum compensation rate, given his average weekly wage of $2,747.11 and his post-injury wage-earning capacity of $472.80 per week. 33 U.S.C. §906.

market survey, finding the search was not diligent.[4] Thus, the administrative law judge concluded that claimant's disability did not change from partial to total and he awarded claimant ongoing permanent partial disability benefits from February 3, 2014.

With respect to the claim for medical benefits, the administrative law judge found that Dr. Mai's recommendation for physical therapy, pain management treatment with Dr. Ramineni, and an orthopedic examination with Dr. Tomaszek were approved by employer in December 2013. Decision and Order on Modification at 8. However, the administrative law judge denied the claim for the requested services and reimbursements because claimant did not show them to be reasonable and necessary for the work-related injury. *Id*. at 8-9; 2 EX 5 at 39. The administrative law judge additionally granted employer's request for relief under Section 8(f).

On appeal, claimant, who is without counsel, challenges the administrative law judge's denial of his motion for modification and the denial of the requested medical benefits.[5] Employer responds, urging affirmance.

Section 22 of the Act, 33 U.S.C. §922, provides the only means for changing otherwise final decisions; modification pursuant to this section is permitted based upon a mistake of fact in the initial decision or a change in a claimant's physical or economic condition. *Metropolitan Stevedore Co. v. Rambo* [*Rambo I*], 515 U.S. 291, 30 BRBS 1(CRT) (1995). It is well established that the party requesting modification has the burden of proof in establishing the change in condition or mistake in fact. *See*, *e.g.*, *Metropolitan Stevedore Co. v. Rambo* [*Rambo II*], 521 U.S. 121, 31 BRBS 54(CRT) (1997); *Island Operating Co., Inc. v. Director, OWCP [Taylor]*, 738 F.3d 663, 47 BRBS 51(CRT) (5th Cir. 2013); *Del Monte Fresh Produce v. Director, OWCP [Gates]*, 563 F.3d 1216, 43 BRBS 21(CRT) (11th Cir. 2009). The standards for determining the extent of disability are the same as in the initial proceeding. *See Rambo I*, 515 U.S. at 296, 30 BRBS at 3(CRT); *Gates*, 563 F.3d 1216, 43 BRBS 21(CRT); *Vasquez v. Cont'l Mar. of San Francisco, Inc.*, 23 BRBS 428 (1990).

[4] The administrative law judge found the jobs contained in employer's 2014 labor market surveys were not suitable. Decision and Order on Modification at 6, n.3.

[5] Claimant additionally challenges the administrative law judge's granting of Section 8(f) relief to employer. Claimant has no standing to appeal the applicability of Section 8(f), *Dove v. Southwest Marine of San Francisco*, 18 BRBS 139 (1986), and the Director, OWCP, has not appealed the administrative law judge's award of Section 8(f) relief. *Director, OWCP v. Donzi Marine, Inc.*, 586 F.2d 377, 9 BRBS 404 (5th Cir. 1978).

Claimant first asserts the administrative law judge made a mistake in fact in finding in his initial decision that claimant's lumbar condition is not related to the work injury.[6] In his initial decision, the administrative law judge found that employer rebutted the Section 20(a), 33 U.S.C. §920(a), presumption afforded claimant on this issue. The record contained no medical opinions linking claimant's lumbar condition to his work injury. Thus, the administrative law judge found that claimant did not establish that his lumbar condition is work-related on the record as a whole. Claimant did not submit any new evidence on modification linking his lumbar condition to his work injury, and Dr. Vanderweide opined that claimant's lumbar condition is not related to claimant's work injury. The administrative law judge, therefore, rationally found that claimant did not establish a mistake in fact with respect to the compensability of his lumbar condition. We affirm this finding as it is supported by substantial evidence of record. *See Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 107 (2003).

Claimant next contends the administrative law judge made a mistake in fact in finding that employer established the availability of suitable alternate employment in 2013 because the security officer position required the employee to stand for the duration of the shift; the flex security officer position required the employee to pass training and licensing requirements; and the assistant store manager position prefers a bilingual employee.

Based on claimant's self-reported restrictions at the initial hearing and in the February 2013 interview with employer's vocational consultant,[7] and based on the absence of any contrary evidence, the administrative law judge found in his initial decision that the totality of claimant's medical conditions limits him to sedentary or light-duty work and to lifting 10 pounds, and that the jobs fall within these restrictions. Decision and Order at 23; 1 EX 15 at 4-5; Tr. 1 at 40-41. With respect to claimant's contentions on modification, the administrative law judge found that the criteria that supposedly preclude claimant from performing the three positions are merely

[6] In his 2013 Decision and Order, the administrative law judge defined claimant's lumbar condition as a disc bulge at L3/L4 causing mild central spinal canal stenosis and borderline neural foraminal stenosis. Decision and Order at 16.

[7] At the January 31, 2013 hearing, claimant testified that he could possibly do light-duty work in the future. Tr. 1 at 40-41. Additionally, on February 27, 2013, claimant told employer's vocational consultant that, post-injury, he remains able to do laundry, grocery shop, and run errands; however, he has problems standing too long, bending, walking, getting up from the kneeling position, and moving his legs to push the gas pedal when driving. He has sensations in his legs including burning, numbness, and a cold feeling. 1 EX 15 at 4-5.

preferences, and not requirements, of the potential employers, and that the three positions conform to claimant's sedentary/light-duty restrictions and 10-pound lifting limitation.[8] Decision and Order on Modification at 4; 1 EX 15 at 10-12. The administrative law judge's finding that the prior decision did not contain mistaken facts concerning claimant's ability to perform alternate work as of March 8, 2013, is rational and supported by substantial evidence, and is therefore affirmed.[9] *See Wheeler*, 37 BRBS

[8] The security officer position description states that the employer "prefers" candidates that have the ability to walk and stand for the duration of the shift, the flex security officer position requires that the employee be able to pass the training and licensing qualifications upon being hired, and the assistant store manager states only that the employer prefers a bilingual employee. Decision and Order on Modification at 4; 1 EX 15 at 10-12. Had claimant undertaken a diligent job search, it would have been apparent if any of these employment conditions precluded claimant from obtaining a job. *See Fox v. West State, Inc.*, 31 BRBS 118 (1997). To the extent claimant contends on appeal that he is precluded from working in the cold, we note that the vocational counselor was aware of claimant's discomfort in cold environments. 1 EX 15 at 5. In addition, although Dr. Vanderweide stated that people with significant neuropathies, such as claimant, "have difficulty working in cold environments," Dr. Vanderweide opined that, as of his April 2014 assessment, claimant was physically capable of performing the flex security officer position, which noted that temperatures ranged from moderate to extreme cold and heat. 2 EX 5 at 12, 15.

[9] Claimant asserts on appeal that his car was repossessed and that city buses do not run near his home such that he cannot obtain the identified suitable alternate employment which was between 15 to 23 miles from claimant's home. This issue was not raised before the administrative law judge. Claimant's lack of transportation is not due to his work injury and has no bearing on the suitability of the positions in this case. *See generally B.H. [Holloway] v. Northrop Grumman Ship Systems, Inc*., 43 BRBS 129 (2009); *Livingston v. Jacksonville Shipyards, Inc*., 32 BRBS 122 (1998). Moreover, claimant was not required to attempt to obtain the exact jobs identified by employer. The purpose of employer's duty to establish suitable alternate employment is to show that there are jobs in the relevant community that claimant can perform such that he retains a wage-earning capacity in his injured condition. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). Once such jobs are identified, claimant's burden is to show "that he was reasonably diligent in attempting to secure a job 'within the compass of employment opportunities shown by the employer to be reasonably attainable and available.'" *Palombo v. Director, OWCP*, 937 F.2d 70, 74, 25 BRBS 1, 8(CRT) (2d Cir. 1991) (quoting *Turner*, 661 F.2d at 1043, 14 BRBS at 165).

107 (2003); *see generally Taylor*, 738 F.3d 663, 47 BRBS 51(CRT); *Pool Co. v. Cooper*, 274 F.3d 173, 178, 35 BRBS 109, 112(CRT) (5th Cir. 2001); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). Moreover, substantial evidence supports the administrative law judge's finding that claimant did not diligently seek suitable work. Although claimant submitted new evidence that he applied for the three suitable positions but did not obtain them, the administrative law judge rationally found claimant did not engage in a diligent job search, as he waited until June 2014 to apply for the positions, long after the March 2013 labor market survey indicated they were available. *Wilson v. Virginia Int'l Terminals*, 40 BRBS 46 (2006); *Berezin v. Cascade General, Inc.*, 34 BRBS 163 (2000). Accordingly, as the administrative law judge's finding is supported by substantial evidence, we affirm the finding that modification of the initial decision is not warranted based on the grounds of a mistake in fact.

Claimant next contends the administrative law judge erred in finding he did not establish a change in his physical and economic conditions, warranting modification of his award to permanent total disability benefits. For the reasons set forth below, we must remand the case for further consideration of the extent of claimant's disability.

The administrative law judge accepted the parties' stipulation that claimant's condition became permanent on February 3, 2014. Decision and Order on Modification at 5. With respect to the extent of claimant's disability, claimant submitted Dr. Mai's records, indicating he had permanent restrictions as of February 3, 2014, and is unable to return to any work. Claimant testified at the modification hearing that he cannot hold a job due to his increased pain, and he submitted new evidence showing that he applied to the positions in employer's 2013 and 2014 labor market surveys but did not obtain any work. The administrative law judge rejected claimant's contention that he is totally disabled. In so finding, the administrative law judge declined to credit Dr. Mai's opinion as to claimant's overall restrictions because it was unclear from Dr. Mai's opinion whether any increase in claimant's disability was due to the work-related cervical condition or the non-work-related lumbar condition.[10] Additionally, the administrative law judge found Dr. Vanderweide's opinion, that claimant's work-related cervical

[10] The administrative law judge cited Dr. Mai's "fluctuat[ing]" responses to employer's insurance adjuster asking whether Dr. Mai's recommendation for massage therapy to treat claimant's pain was for claimant's cervical and/or lumbar condition. Decision and Order on Modification at 5-6; 2 EXs 8, 9. Specifically, the administrative law judge noted that Dr. Mai's initial faxed response, sent March 18, 2014, at 16:31, stated it was for the lumbar condition, and the subsequent corrected faxed response, sent March 18, 2014, at 17:49, stated it was for the "lumbar & cervical" conditions. 2 EXs 8, 9.

surgery resulted in only a 40-pound lifting restriction and that any additional restrictions were due to claimant's non-work-related pre-existing polyneuropathy and degenerative arthritis, entitled to greater weight in light of his credentials as an orthopedic specialist. Decision and Order on Modification at 6; 2 CX 2 at 46; 2 EX 5 at 10-15; Tr.2 at 10, 25. The administrative law judge found that claimant failed to establish a change in his ability to perform the previously identified suitable alternate employment and, thus, denied modification as to the extent of claimant's disability.

We must remand the case for further consideration of the extent of claimant's disability. The administrative law judge did not discuss claimant's testimony at the modification hearing.[11] *See, e.g., Eller & Co. v. Golden*, 620 F.2d 71, 74, 12 BRBS 348, 351 (5th Cir. 1980) ("A claimant's credible testimony may constitute substantial evidence justifying an award of compensation."). Moreover, the administrative law judge did not address whether the restrictions imposed by Drs. Mai and Vanderweide are for claimant's neuropathic condition, which was aggravated by the work injury. In this respect, the administrative law judge did not address claimant's assertion that Dr. Mai's reference to a "lumbar condition" pertained only to claimant's lower-extremity neuropathy.[12] Dr. Vanderweide's opinion, which the administrative law judge gave great weight, did not attribute any restrictions to a lumbar condition but appears to have attributed all of claimant's limitations to conditions the administrative law judge found were made symptomatic by the work injury.[13] Thus, we must remand the case for the administrative

[11] Claimant, whom the administrative law judge credited in his initial decision, testified at the hearing on modification that he cannot get or keep a job because of his pain, his inability to sleep, and his reactions to his medications (hydrocodone, flexeril, sleeping pills). Tr. 2 at 18. Claimant also testified that his pain has gotten worse. For example, at the first hearing, claimant had constant numbness in his hand, but at the modification hearing he testified that the numbness fluctuates, and when he moves his fingers or uses his computer, pain runs from his hands into his shoulders and rotator cuff, and the whole area "goes dead." *Id*. at 15-16; *compare with* 2 CX 2 at 46.

[12] Claimant stated that Dr. Mai does not treat his lumbar spine, so references to a "lumbar condition" relate to claimant's neuropathy. Tr. 2 at 28-29.

[13] Although Dr. Vanderweide stated claimant's current symptoms are not related to the work injury, he attributed a 40-pound lifting limitation to claimant's work-related cervical surgery and all additional limitations or difficulties to claimant's pre-existing poly/peripheral neuropathy and degenerative arthritis, which the administrative law judge found in his first Decision and Order to have been aggravated by the work injury. Decision and Order at 16-17, 19; 2 EX 5 at 10-12. Specifically, Dr. Vanderweide opined that claimant's neuropathy and degenerative arthritis will limit his ability to stand or walk for a prolonged period of time, preclude him from engaging in an occupation that

law judge to address whether claimant has increased work-related restrictions that preclude him from performing the suitable alternate employment or any work such that claimant established a change in the extent of his disability. *See generally J.R. [Rodriguez] v. Bollinger Shipyard, Inc.*, 42 BRBS 95 (2008), *aff'd sub nom. Bollinger Shipyards, Inc. v. Director, OWCP*, 604 F.3d 864, 44 BRBS 19(CRT) (5th Cir. 2010).

On remand, the administrative law judge also must reconsider claimant's request for medical benefits and mileage expenses. The administrative law judge did not fully address claimant's entitlement to reimbursement for mileage expenses, as he did not compare the medical records with the mileage logs.[14] 2 CX 2; 2 EX 7 at 8, 15-16, 19-24. Additionally, on remand, the administrative law judge must reconsider whether claimant is entitled to reimbursement for compensable medical treatment, particularly, services of Dr. Curbow in 2011, as medical records were generated for these visits.[15] 1 CX 1 at 6, 16, 21, 23-24; 1 CX 3 at 2-5; Tr. 1 at 10, 18; Cl. Post- Hearing Br. 2 at 35; *see Ezell v.*

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requires him to look up or look over his shoulder frequently, and may limit his ability to work in cold environments. 2 EX 5 at 12.

[14] The administrative law judge found it is unclear which claims for mileage remained unpaid and to what medical condition each request related. Decision and Order on Modification at 8. The record reflects that claimant submitted mileage reimbursement logs in: (1) September 2013 for mileage incurred in November 2011 through August 2013; (2) November 2013 for mileage incurred in October 2013; (3) December 2013 for mileage incurred in November 2013; and (4) January 2014 for mileage incurred between December 2013 and January 2, 2014. 2 EX 7 at 19-24. The record further reflects that employer reimbursed claimant for all expenses documented on the September 2013 log; 146.07 miles of the requested 175.27 miles documented on the November 2013 log; 41.42 miles of the requested 82.84 miles documented on the December 2013 log; and, 20.71 miles of the requested 268.55 miles on the January 2014 log. *Id*. Although the record does not contain supporting medical reports for all of the requested mileage expenses, there are medical records that correspond to the requested expenses on the following 2013 dates that may have gone unpaid: October 1, 8, and 14; and December 18 and 31. 2 CX 2 at 1, 6, 10, 15, 20, 35.

[15] Claimant, for the first time on appeal, requests reimbursement for medical bills he paid in 2014, and clarifies that $350 was paid to Dr. Tomaszek just prior to surgery on November 23, 2011. The Board may not address assertions made for the first time on appeal. *See, e.g., Turk v. Eastern Shore R.R., Inc.*, 34 BRBS 27 (2000); *Luna v. General Dynamics Corp.*, 12 BRBS 511 (1980). Claimant may seek permission from the administrative law judge to submit these receipts on remand.

Direct Labor, Inc., 37 BRBS 11 (2003); *Pardee v. Army & Air Force Exchange Service*, 13 BRBS 1130 (1981) (Miller, J., dissenting); *Suppa v. Lehigh Valley R.R. Co*., 13 BRBS 374 (1981) (employee must establish that medical expenses are for treatment of the compensable injury).

We reject claimant's assertions of error with regard to the administrative law judge's findings pertaining to the need for a yard man, transport services, maid services, pain management, and gabapentin medicine recommended by Dr. Mai. The administrative law judge correctly found that employer had approved the recommended pain management treatment with Dr. Ramineni on December 12, 2013. 2 EX 7 at 10. Thus, it was reasonable for the administrative law judge to also find that Dr. Ramineni would be more qualified to address claimant's need for pain medication than Dr. Mai. Decision and Order on Modification at 8; *see Turner v. Chesapeake & Potomac Telephone Co*., 16 BRBS 255 (1984). With respect to Dr. Mai's recommendations for a yard man, transport services, and maid services, the administrative law judge rationally found claimant failed to establish that they were medically necessary for the work injury, as Dr. Mai provided no rationale for the need for these services, Dr. Vanderweide opined that claimant was physically capable of cleaning, and the administrative law judge observed claimant at both hearings and saw that he was not precluded from performing certain movements. 33 U.S.C. §907(a), (b); *Sanders v. Marine Terminals Corp.*, 31 BRBS 19 (1997) (Brown, J., concurring); 20 C.F.R. §702.412(b). As the administrative law judge's findings are rational and supported by substantial evidence, we affirm them.

However, we vacate the administrative law judge's denial of claimant's request for massage therapy recommended by Dr. Mai. Contrary to the administrative law judge's finding, Dr. Vanderweide did not specifically address and reject claimant's need for massage therapy. 2 EX 5 at 38-39. An administrative law judge may not find that treatment recommended for a work-related injury is unreasonable where no doctor states that the treatment is unnecessary or unreasonable. *Amos v. Director, OWCP*, 153 F.3d 1051 (1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999); *Kelley v. Bureau of Nat'l Affairs*, 20 BRBS 169 (1988); *Turner*, 16 BRBS 255. To the extent the administrative law judge did not award the massage therapy due to confusion in Dr. Mai's opinion as whether such therapy is needed for the work injury, the administrative law judge should consider whether Dr. Ramineni is in a better position to address this pain treatment or whether Dr. Mai's opinion establishes that massage therapy is reasonable and necessary for, and is due, at least in part, to a work-related condition.

Accordingly, the administrative law judge's denial of total disability benefits and certain medical benefits is vacated, and the case is remanded for further consideration consistent with this opinion. In all other respects, the administrative law judge's Decision and Order on Modification is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge